

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

<b>UNITED STATES OF AMERICA,</b>	:	<b>Case No. 1:07-CR-060-3</b>
<b>Plaintiff,</b>	:	
	:	<b>Judge Sandra S. Beckwith</b>
<b>vs.</b>	:	
	:	
<b>PAUL H. VOLKMAN, et al.</b>	:	
<b>Defendants.</b>	:	

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**DEFENDANT’S MOTION IN LIMINE TO PRECLUDE EVIDENCE OF  
COMPLAINTS BY PHARMACISTS**

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*Now comes* the Defendant, Paul H. Volkman, by and through counsel, and moves this honorable Court for an Order instructing the Prosecuting Attorney, the Government’s representatives, and the Government’s witnesses to refrain from making any direct or indirect mention at trial of hearsay statements by pharmacists who have refused to fill Defendant Volkman’s prescriptions during the period in question. The motion is based upon the express authority of Rules 403, 801 and 802 of the Federal Rules of Evidence.

**ARGUMENT**

This is a complex case involving various alleged improprieties concerning the dispensing of prescription medication from Tri-State Health Care clinic. Beginning in June 2003, it is alleged that DEA offices in Columbus, Louisville and Cincinnati received complaints from a number of pharmacists and pharmacies regarding prescribing practices of Dr. Volkman at the Tri-State Health Care clinic.

These pharmacists/pharmacies include, but are not necessarily limited to, Pharmacist Ric Griffith of Griffith & Feil Pharmacy, Kinova, West Virginia; Pharmacist

Phil Raurk of Wright Pharmacy, South Shore, Kentucky; Pharmacist Dave Buchart of Holzer Pharmacy, Jackson, Ohio; Walgreens, 2583 East Broad Street, Columbus, Ohio; Pharmacist Stephen Stacker of Stacker Drugs, West Portsmouth, Ohio; Pharmacist Bachvan Cao of Oakland Park Pharmacy, Columbus, Ohio; Pharmacist Elizabeth Milbaugh, Drug Store Pharmacy, Columbus, Ohio; Pharmacist Grif Vincent, Mt. Sterling, Ohio; Tech Christy McMillan, K-Mart Pharmacy, Grayson, Kentucky; Pharmacist Mark Carroll, Rite Aid, Grayson, Kentucky; and Willie Patton, owner of Horton Brothers and Brown Pharmacies, Grayson, Kentucky.

The foregoing list is not necessarily an exhaustive list of all pharmacists and pharmacies registering these alleged complaints. While this information may have been useful to law enforcement agencies in securing search warrants and to the Pharmacy Board in carrying out its functions, statements attributed to the various pharmacists constitute inadmissible hearsay. Fed.R.Evid. 803. Further, reports concerning these complaints may contain paraphrased information or involve interpretive comments, tainting their reliability. The pharmacists' complaints may contain information attributed to unidentified drug addicted parties, further calling into question their reliability.

Among the reasons that reference to these complaints must be excluded from Defendant Volkman's trial are potential violations of Dr. Volkman's constitutional rights pertaining to confrontation, cross examination, and a fair trial. *Pointer v. Texas*, 380 U.S. 400, 405; *United States v. Gomez Lemos*, 939 F.2d 326 (6<sup>th</sup> Cir.1991); *Coy v. Iowa*, 487 U.S. 1012; U.S.C.A. 6.

Allowing introduction of these alleged complaints into Dr. Volkman's trial directly, or indirectly, has the potential of permitting a conviction based on the charges of

unseen, unsworn, and unchallengeable persons whose statements have not been submitted to cross-examination. *Lee v. Illinois*, 476 U.S. 530; *California v. Green*, 399 U.S. 149.

In view of the foregoing, Defendant Paul Volkman moves this Court for an Order instructing the Prosecuting Attorney, the Government's representatives, and the Government's witnesses to refrain from making any direct or indirect mention at trial of any alleged complaints made to the DEA or the Ohio Board of Pharmacy by pharmacy owners or pharmacy-related personnel.

*WHEREFORE*, Defendant respectfully requests his motion in limine is granted.

Respectfully submitted,

*s/ Wendé C. Cross*

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 20, 2010, I electronically filed the foregoing with the clerk of court using the CM/ECF system which will send a notice of electronic filing to all parties of record.

s/ *Wende C. Cross*

WENDE C. CROSS

*Attorney for the Defendant Paul H. Volkman*